



REPUBLIC OF KENYA
IN THE POLITICAL PARTIES DISPUTES TRIBUNAL AT NAIROBI
COMPLAINT NO. 286 OF 2017

GABRIEL ODONGO OWIDI.....APPELLANT/CLAIMANT

-VERSUS-

GEOFFREY OTIENO OPIYO.....1ST RESPONDENT

ORANGE DEMOCRATIC MOVEMENT.....2ND RESPONDENT

JUDGMENT

Summary of the Complaint

1. The present complaint concerns the 2nd Respondent's nominations for Member of the County Assembly, South Kasipul Ward, Kasipul Constituency, Homa Bay County held on 24th April 2017. It is the Claimant's contention that the exercise was marred with irregularities prompting him to lodge an appeal with the party's County Appeals Tribunal (hereinafter referred to as the party's IDRM). In a decision dated 6th May 2017, the said party's IDRM found in favour of the Claimant and directed that the interim certificate to be issued to him.
2. He further contended that despite the IDRM decision, no nomination certificate was issued to him and instead, the 2nd Respondent allegedly submitted the name of the 1st Respondent to the Independent Electoral Boundaries Commission (IEBC).
3. In support of his claim, he attached a copy of his appeal to the party's IDRM and the IDRM decision dated 6th May 2017.

The Response

4. In reply, the 1st Respondent via a Replying Affidavit filed on 25th April 2017, contended that he was declared winner and duly awarded the final party nomination certificate by the Returning Officer. He argued that the Claimant came a distant sixth in the nomination exercise and therefore had no legitimate expectation to be the 2nd Respondent's nominee. He disputed the Complainant's allegations that the nomination exercise was marred with irregularities, and averred that the exercise was peaceful and conducted in a free and fair manner.
5. It is also the 1st Respondent's contention that he was not informed of the party's IDRMs proceedings challenging the outcome of the nomination exercise. He averred that the IDRMs decision did not take into consideration material facts and evidence and consequently violated the principles of natural justice and his political rights as captured under Article 38 of the Constitution of Kenya.

Issue for determination

6. In our consideration, the main issue for determination is *whether the Claimant should be gazetted as the 2nd Respondent's nominee for the position of Member of County Assembly, South Kasipul Ward, Kasipul Constituency, Homa Bay County.*

Analysis

7. As stated above, the Claimant's main contention is that the nomination exercise of 24th April 2017 was marred with irregularities and consequently, the party's IDRMs held that the interim nomination certificate be issued in his favour.
8. Upon perusal of the IDRMs decision dated 6th May 2017, it is clear that the proceedings did not benefit from the evidence of the Returning Officer, an official of the 2nd Respondent specifically mandated to declare the results of the nomination exercise. Further, that the IDRMs did not consider the evidence and testimony of the 1st Respondent before making its determination. If indeed the exercise was marred with serious irregularities, it is unclear on what basis the

IDRM directed the nomination certificate to be issued to the Claimant. Based on the foregoing, it appears that the IDRM did not properly consider all the relevant facts and evidence in this matter before making a determination.

9. This Tribunal having considered the evidence and affidavit of the Returning Officer dated 24th May 2017 wherein he avers that the nomination exercise was peaceful and conducted in a free and fair manner as a result of which he duly declared the 1st Respondent as the winner. Further considering that the said Returning Officer adduced before this Tribunal polling results forms and tallying sheets that supported his declaration of the 1st Respondent win, the 1st Respondent appears to be the rightful nominee for the position in issue.
10. On this basis, we are satisfied that the 1st Respondent was duly declared the winner of the said nomination exercise and that the Claimant has failed to convince this Tribunal that he is the party's nominee for the said position.

Orders

11. Consequently, this Tribunal finds that the application dated 18th May 2017 fails and the same is hereby dismissed with no orders as to costs.

DATED at NAIROBI this 25TH DAY of MAY 2017

1. **M. O. Lwanga(Presiding Member)**
2. **Desma Nungo.....(Member)**
3. **Paul Ngotho(Member)**
4. **Dr. Adelaide Mbithi(Member)**